

JAFFE & ASHER LLP

ATTORNEYS AT LAW

PLEASE RESPOND TO WHITE PLAINS OFFICE

600 THIRD AVENUE
NEW YORK, NY 10016-1901
212-687-3000
TOLL FREE 888-625-9895

ESTABLISHED 1974
WWW.JAFFEANDASHER.COM

445 HAMILTON AVENUE, SUITE 405
WHITE PLAINS, NY 10601
TEL 212-687-3000
FAX 914-437-8076

January 17, 2023

VIA ECF

Hon. Ronnie Abrams, U.S.D.J.
United States District Court
Southern District of New York
40 Foley Square
New York, NY 10007

**Re: Liberty Mutual Fire Insurance Company v. Zurich American Insurance
Company of Illinois
Civil Action No. : 1:22-cv-00499-RA**

Dear Judge Abrams:

Our firm represents plaintiff LIBERTY MUTUAL FIRE INSURANCE COMPANY (“Liberty Mutual”) in the above-captioned matter. I write to raise an issue regarding defendant ZURICH AMERICAN INSURANCE COMPANY’s (“Zurich”) filing of an alleged Cross-Motion for Summary Judgment, in violation of this Court briefing schedule orders.

On October 19, 2023, this Court issued a briefing schedule for the requested motion for summary judgment. Of note, neither at the October 6, 2022 conference nor in the September 29, 2022 joint letter (Document 22) did Zurich suggest an intent to file a motion for summary judgment. On November 16, 2022, this Court issued an Order providing for a revised motion schedule, as follows:

	<u>Old Date</u>	<u>New Date</u>
Moving Papers:	November 18, 2022	November 29, 2022
Opposition Papers:	January 6, 2023	January 17, 2023
Reply Papers:	January 20, 2023	January 31, 2023[3]

Even if Zurich had previously indicated that it was moving for summary judgment, its moving papers were due on November 29, 2022.

The clear purpose of Zurich’s motion for summary judgment is to potentially allow it the last word by seeking to file a reply after Liberty Mutual’s reply papers are due on its pending motion for summary judgment.

We respectfully request that this Court strike Zurich’s cross-motion for summary judgment, direct Zurich to file opposition papers within a few days, and grant Liberty Mutual 14

Hon. Ronnie Abrams, U.S.D.J.
January 17, 2023
Page 2

days from filing to serve and file its reply papers. In the alternative, we request that the Court grant Liberty Mutual until February 7, 2023 to serve and file its opposition/reply papers, and preclude Zurich from filing a reply on its alleged Cross-Motion so that it may not benefit from its procedural improprieties.

We thank the Court for its consideration of this application.

Respectfully submitted,

/s/ Marshall T. Potashner
Marshall T. Potashner

MTP:mp
Cc: Alexandra Rigney, Esq. (via ECF)

Plaintiff's request to strike Defendant's cross-motion for summary judgment is denied. Plaintiff's request for an extension to file its opposition and reply until February 7, 2023 is granted. The parties shall seek leave of Court for any future amendments to the briefing schedule.

SO ORDERED.



Hon. Ronnie Abrams
1/19/2023